

**OHIO CASE SUMMARIES**  
**A SERVICE OF**  
**GREEN & GREEN, LAWYERS**  
A Legal Professional Association

**Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at [jawagner@green-law.com](mailto:jawagner@green-law.com).**

Court of Appeals: First District

Case Name: *State Automobile Mut. Ins. Co. v. Coogan*, 2006-Ohio-5074

Decided: September 29, 2006 (posted September 29, 2006)

Issue(s): Third Party Motion for Relief From Judgment / Motion to Intervene

Summary of Opinion: The victim was injured in an automobile accident caused by the insured while riding as a passenger in a vehicle driven by the insured. The insured refused to respond to numerous requests for information from his insurer, State Auto. Accordingly, State Auto filed a motion for declaratory judgment against the insured, claiming that the insured was not entitled to coverage, defense, or indemnity under the State Auto policy due to his failure to cooperate. The insured failed to respond to the declaratory judgment action and default judgment was entered against him. Two months later, the victim filed a Civ.R. 60(B) motion for relief from judgment and a Civ.R. 24 motion to intervene in the action. The victim did not file any evidence in support of these motions. Instead, he relied upon the allegations made by State Auto in the Complaint it had filed in the action. The trial court granted both motions, and State Auto appealed. On appeal, State Auto argued that a Civ.R. 60(B) motion for relief from judgment must be supported by affidavits, depositions, or some sort of evidence other than the pleadings. After acknowledging a conflicting decision in the Eight District, the First District affirmed the decision of the trial court and held that a Civ.R. 60(B) motion can be granted based solely on the factual allegations raised in the pleadings. State Auto also argued that the motion to intervene was improperly granted because the victim did not have an interest in the proceeding until judgment was entered in favor of the insured, particularly under R.C. 2721.02(B). The appellate court disagreed and found that R.C. 2721.02(B) only prevents a victim from commencing an action against an insurance company prior to judgment against the insured, but does not prevent a victim from intervening in an action commenced by another party.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

Court of Appeals: Third District

Case Name: *Hildreth v. Rogers*, 2006-Ohio-5151

Decided: October 2, 2006 (posted October 2, 2006)

Issue(s): Primary Assumption of the Risk

Summary of Opinion: Plaintiff and Defendant were in a relationship and living together. One day, Plaintiff and Defendant got into an altercation, and Defendant went outside to her car to leave. In an attempt to stop Defendant from leaving, Plaintiff sat on the trunk of Defendant's car. Defendant drove off despite Plaintiff being on the trunk. Eventually Plaintiff fell off of the trunk and sustained injuries. At trial, Defendant argued that riding on the trunk of a car is inherently dangerous and that Plaintiff had assumed the risk of falling off by choosing to ride on the trunk. Therefore, Defendant argued that she was not liable under the doctrine of primary assumption of the risk. The trial court agreed and dismissed Plaintiff's action through summary judgment. On appeal, the Third District reversed, holding that summary judgment was improper because there is a material issue of fact as to whether the car was moving prior to Plaintiff getting on the trunk. According to the Third District, primary assumption of the risk would apply only if Plaintiff had gotten on the trunk with the belief that Defendant would operate the vehicle with him on the trunk. Thus, one does not assume the risk of riding on a vehicle's trunk by jumping on the trunk of a stationary vehicle. Furthermore, the appellate court also held that Defendant owed Plaintiff a duty of care to operate her vehicle in a reasonable manner and that there was a factual dispute as to whether Defendant had breached this duty.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.